



**United States
Department of
Agriculture**

Food and
Nutrition
Service

Midwest Region

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MWFS-100: FS 13-1-3 MN

May 4, 2004

Ms. Maria Gomez, Assistant Commissioner
Economic and Community Support Strategies
Minnesota Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55155

Dear Ms. Gomez:

This is in response to the State of Minnesota's March 8, 2004 request for a waiver of the definition of eligible foods at 7 CFR 271.2 of the Food Stamp Program regulations. The waiver would have prohibited the purchase of candy and soft drinks that are taxed under State law with food stamp benefits.

We are denying the State's waiver request for the reasons specified in the attached Waiver Response Outline.

We applaud the State for recognizing the importance of healthy eating by food stamp recipients. However, we believe that supporting healthier food choices through nutrition education and promotion is preferable to the proposed mandate. We are committed to working with the State to develop new approaches to improving nutrition levels of food stamp recipients.

If you have any questions or comments, please contact me or have a member of your staff contact Tim English at (312) 353-1533 or tim.english@fns.usda.gov.

Sincerely,

Signed

OLLICE C. HOLDEN
Regional Administrator

cc: J. Morrison, Planning Director, TSP, ASD, MDHS, St. Paul, MN (via email)

WAIVER RESPONSE OUTLINE

1. **Waiver serial number:** 2040053
2. **Type of request:** Initial
3. **Primary regulation citation:** 7CFR 271.2
4. **Secondary regulation citation:** N/A
5. **State:** Minnesota
6. **Region:** MWRO
7. **Regulatory requirements:** Current regulations at 271.2 define eligible food as any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption; eligible foods are further defined as seeds and plants to grow food for the personal consumption of eligible households; and meals prepared and delivered or served to eligible food stamp recipients, as well as equipment for hunting and fishing in certain specified areas in Alaska.
8. **Description of proposed alternative procedures:** Minnesota proposes to amend the regulations to provide that candy and soft drinks as defined in Minnesota tax law may not be purchased with food stamp benefits. The proposal would exempt any foods that have flour as an ingredient.
9. **Action and reason for approval or denial:** We are denying the waiver as requested based on Section 272.3(c)(2)(i) of the regulations. This provision specifies that no waiver of the regulations may be approved if such a waiver would be inconsistent with the provisions of the Food Stamp Act. Section 3(g) of the Act defines “food” in a manner that is almost identical to that of the FSP regulations. By proposing to change the definition of “food” in the Food Stamp Program (FSP) operated in the State of Minnesota, the waiver request is in direct conflict with the statute. Therefore, any such waiver request would not qualify for approval.

Further, a demonstration project request under Section 17 of the Food Stamp Act proposing to prohibit the purchase of candy and soda as contained in this waiver request would not be considered, based on the questionable merits of the proposal, as set forth in the following paragraphs.

Under this proposal, only certain types of candy and soft drinks, as defined by the tax law of Minnesota, would be ineligible for purchase with FSP benefits. For example, Minnesota's request would allow the purchase of Kit-Kat and Twix candies (because they contain flour), but would prohibit the purchase of Hershey candy bars.

The proposal would also undermine the interoperability of the FSP among States. The FSP is a 100 percent Federal benefit with administrative costs shared with States. A uniform FSP allows FNS and States to implement interoperability. Allowing conflicting definitions of eligible food items would introduce obstacles to continuing interoperability and would undermine the significant benefits that interoperability provides to program recipients nationwide.

We also remain very concerned that approval of any such waiver could have negative consequences for program participants, including the reintroduction of a stigma of participation in the FSP that implementation of EBT helped to eliminate. Further, such a program change could add confusion and embarrassment at the point of sale when program recipients attempt to purchase food items once allowable but now deemed ineligible. Moreover, implementation of this waiver would perpetuate the myth that FSP participants do not make wise food purchasing decisions. A substantial body of research has shown that program participants are smart shoppers and that there is little difference in nutrient intakes between low-income participants and higher income consumers.

Also, there is some question as to how retailer compliance activities would be impacted if such a waiver were implemented. Administrative difficulties ranging from what penalties, if any, would be brought against retailers for noncompliance with the restrictions imposed by the waiver and what entity, the State or USDA, would be responsible for monitoring compliance would ensue.

We applaud the State for recognizing the importance of healthy eating by food stamp recipients. As the cornerstone of the USDA nutrition assistance programs, the FSP plays a vital role in helping to improve nutrition for low-income individuals. In Fiscal Year 2004, the State of Minnesota will receive \$6,403,634 of Federal funds for the nutrition education of food stamp recipients. The proposed waiver attempts to improve the nutrition of recipients by prohibiting them from purchasing certain foods with FSP benefits. We believe that supporting healthier food choices through nutrition education and promotion is preferable to the proposed mandate. We are committed to working with the State to develop new approaches to improving nutrition levels of food stamp recipients.

10. **Regulatory or legislative basis for action.** We are denying the waiver on the basis that it would be inconsistent with the provisions of the Act as specified in 7 CFR 272.3(c)(2)(i).